

Hira Devi Vs. Digbijai Singh

Hira Devi Vs. Digbijai Singh

SooperKanoon Citation : sooperkanoon.com/456167

Court : Allahabad

Decided On : Feb-28-1916

Reported in : (1916)ILR38All322

Judge : Poggott and; Walsh, JJ.

Appellant : Hira Devi

Respondent : Digbijai Singh

Judgement :

Piggott, J.

1. In this case the plaintiff and the defendant are both co-sharers in a certain mahai and the defendant is the recorded lambardar of the same. The plaintiff brought the present suit in the Civil Court, alleging that the defendant had during the years in suit realized certain moneys on behalf of himself and of the plaintiff, in respect of which the latter claimed his share. The moneys in question are described as being rents of certain shops and houses, market dues and ground rents paid in connection with a market. Apart from his defence on the merits, the defendant pleaded that these realizations had been made by him in his capacity of lambardar of the mahal, and that the only form of suit which could be brought against him would be a suit under Section 164 of the Agra Tenancy Act (Local Act II of 1901). He also pleaded that a suit under, provisions of the Tenancy Act had already been brought against him as lambardar in the Revenue Court, and that of

the claim now put forward, a part, namely the portion relating to the rents of shops and houses, had been included in the claim before the Revenue Court and dismissed by that court, while the remainder of the claim had not been included in the suit brought in the Revenue Court, whereas it should have been so included. The court in which the present suit was filed upheld the defendant's contention on the point of law and held that the whole of the present suit was barred, either by the provisions of Section 11 of the Code of Civil Procedure, or by those of Order II, Rule 2, of the same Code. In appeal the learned District Judge has reversed this finding and remanded the case for trial on the merits. The defendant appeals against the order of remand. We have been referred to one authority which certainly has some bearing on the question of law involved. It is the case of Baldeo Singh v. Beni Singh Weekly Notes 1899 p. 57. The learned Munsif seems to have thought that that case was authority for his decision, but if it be attentively examined, it seems to be all the other way. The learned Chief Justice in that case came to the conclusion that the money claimed in the suit then before him was part of the income of a village derived from revenue paying land, and that consequently the lambardar who had realized it was bound to include it among the divisible profits for the benefit of other co-sharers and could be made to account for the same by means of a suit in the Revenue Court. The learned Judge who concurred in the decision laid it down that the word 'profits' should be understood to mean all income which the lambardar of a mahal realizes by virtue of his position as such, save and except the income derived from lands occupied by dwelling-houses and manufactories or appurtenant thereto. The income in question in the present case would seem clearly to be income derived from land occupied by dwelling-houses or appurtenant thereto. So far as I can gather from the record it is not revenue-paying land within the sense in which that expression was used by the learned Chief Justice in the case under reference. The learned District Judge has based his decision upon a somewhat broader ground. The point seems to me to be a very arguable one if it came before us as *res integra*. I think, however, it is virtually covered by the decision to which I have referred and that this is a matter in which it is peculiarly important that the established course of decision should not be disturbed. At any rate I am not prepared to dissent from the conclusion arrived at by the learned District Judge that the present claim was not

one which could have been maintained as a suit for profits in the Revenue Court under Section 164 of the Tenancy Act. If this is so, then both the objections taken fall to the ground, as neither Order II, Rule 2, of the Code of Civil Procedure, nor Section 11 of the same Code could bar the present suit. I would, therefore, dismiss the appeal with costs.

Walsh, J.

2. I concur.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com